

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

MARGARET CARTER
CLERK

JOHN JOSEPH MOAKLEY
UNITED STATES COURTHOUSE
1 COURTHOUSE WAY, SUITE 2500
BOSTON, MA 02210
(617) 748-9057

TEN POINTERS FOR AN APPEAL

The following pointers may not result in a winning decision on the merits of your appeal, but they will make your road to the decision a smoother one.

- 1. Read and follow the rules of appellate procedure.** The Federal Rules of Appellate Procedure, together with the Local Rules, provide guidance from the size font to use to the required sections of a brief. All too often, attorneys fail to read the Local Rules. A copy of the Local Rules as well as many of the court's forms, including applications for admission, appearance forms, and the court's opinions, are available on the court's website. Attorneys filing electronically should also review the Administrative Order Regarding Case Management / Electronic Case Files System ("CM/ECF").
- 2. Pay the filing fee.**
 - A. The \$505 filing fee for a notice of appeal must be paid in the district court.
 - B. The \$500 filing fee for a petition for review or petition for writ of mandamus must be paid in the court of appeals.
 - C. Failure to pay the fee or seek in forma pauperis status within 14 days after the case is docketed in court of appeals will lead to dismissal of the appeal in accordance with 1st Cir. R. 3.0.
- 3. Admission as a prerequisite to practice.** In order to file motions, pleadings or briefs on behalf of a party or participate in oral argument, attorneys must be admitted to the bar of this court and file an appearance form. 1st Cir. R. 46.0. Counsel should also register to use the court's electronic filing system at the PACER website, www://pacer.psc.uscourts.gov. After January 1, 2010, electronic filing is mandatory for all attorneys practicing in this court unless they are granted an exemption.
- 4. File a corporate disclosure statement when one is required by Fed. R. App. P. 26.1,** upon filing any document in the court of appeals *and* at the beginning of a party's main brief.
- 5. Order the transcripts promptly and completely.**
 - A. See Fed. R. App. P. 10(b), which requires that the transcripts be ordered within 14 days of filing the notice of appeal. Counsel have 14 days after the appeal is docketed to file the transcript order form in the court of appeals.
 - B. See also 1st Cir. R. 10.0, which asks counsel to order the transcripts even before the expiration of the deadline, and which also warns that counsel who do not

timely file transcript orders are subject to monetary sanctions and have to explain their tardiness in any enlargement motions.

- C. Even successor counsel on appeal, appointed or retained well past that fourteen day date, should immediately check the record to insure that all necessary transcripts have been ordered.
- D. Be specific in your transcript order, specifying the date and type of hearing. “All Trial Transcripts” will not suffice.
 - 1. You must review the district court docket to identify what hearings you wish transcribed.
 - 2. You must complete and file all necessary forms, including a CJA Form 24 voucher if you are appointed counsel or an indigent criminal defendant-appellant.
 - 3. You must maintain contact with the court reporters(s) on the case.
- E. The clerk’s office will set a briefing schedule once the record on appeal, including all necessary transcripts, is complete.

6. Comply with the Court’s deadlines.

- A. A brief or appendix filed in paper format is timely filed if mailed by the due date. Fed. R. App. P. 25(a)(2)(B).
- B. All other documents, including petitions for rehearing/rehearing en banc, must be received by the Court by the due date. Fed. R. App. P. 25(a)(2)(A).

7. Filing motions in accordance with Fed. R. App. P. 25 - 27.

- A. The title of the motion must indicate on whose behalf it is filed and the purpose of the motion.
- B. Motions for extension of time must establish good cause. Fed. R. App. P. 26(b). Good cause does not mean simply “I didn’t get to the brief”, “I’m busy”, “I’m on vacation”, “I need more time” (without explanation for the need); or “the press of other business prevented me from briefing the case on time” (especially if the pressing business are newer cases than the appeal).
- C. When requesting an enlargement, request the amount of time that you need. Do not simply try to enlarge the time from month to month. Specify a date certain, not “one month after production of the transcripts.”
- D. Paper copies of motions filed electronically are not required unless requested by

the clerk's office. Attorneys and parties filing in paper form must file an original and three copies of any motion, unless the court requires a different number. Fed. R. App. P. 27(d).

- E. All filings must be accompanied by proof of service on all parties to the appeal certifying the date and manner of service, the names of the persons served, and the addresses at which they were served. Fed. R. App. P. 25(d). ECF Filers must include a certificate of service with any electronically filed document which states whether the parties being served are ECF Filers being served electronically by the Notice of Docket Activity or whether they are being served using an alternate method of service permitted by Fed. R. App. P. 25(c)(1), and, if so, which method. Administrative Order Regarding Case Management/Electronic Case Files System (CM/ECF).

8. Joint Appendix and Addendum to Appellant's Brief.

- A. Joint Appendix. The district courts no longer transmit the full record except upon the rare request of the circuit clerk. Although the electronic district court record is available to the court of appeals whether or not individual documents are transmitted, litigants should ensure that the addendum and appendix, combined, include those parts of the record necessary to understand the issues on appeal. At the same time, the appendix should not be unduly large. Pursuant to Fed. R. App. P. 30(a)(2), counsel may cite to parts of the record not included in the appendix. The pages of the appendix should be double-sided. For additional guidance, see Notice to Counsel Regarding Contents of the Appendix, posted on the court's website.
- B. Addendum to Appellant's Brief.
 - 1. The addendum must contain the judgment or order appealed from, along with any supporting opinion or memorandum issued by the judge or magistrate judge. If the appeal is from a decision reviewing an underlying agency, bankruptcy, or state court decision, the underlying decision must also be included.
 - 2. The addendum may include twenty-five pages of other record documents. 1st Cir. R. 28.0. In order to file an addendum in excess of twenty-five pages, counsel must file a motion to enlarge the page limit. The addendum is in addition to, not in lieu of an appendix, although documents reproduced in the addendum need not be included in the appendix.
 - 3. Documents that are transmitted to this court under seal, such as presentence reports, must not be included in an addendum or appendix. In addition, pursuant to a policy of the Judicial Conference of the United States, a statement of reasons in a criminal case is a non-public document. Briefs and appendices including such materials will be rejected as noncompliant.

However, these materials may be filed in a separate volume clearly marked "SEALED." See 1st Cir. R. 11.0 and 28.0. Sealed documents may not be filed electronically. See Administrative Order Regarding CM/ECF, Rules 1 and 7.

9. Procedure for withdrawal as counsel in criminal cases.

Remember that trial counsel in criminal cases remain counsel on appeal, despite the allowance of a motion to withdraw by the trial court, until given leave to withdraw by this Court. 1st Cir. R. 12.0(b) and 46.6(a). The purpose of this rule is to prevent criminal defendants from falling through the cracks due to their lack of knowledge concerning how to gain in forma pauperis status, how to request appointment of successor counsel, and how to comply with this Court's notices and deadlines.

- A. Motions to withdraw in criminal cases must be accompanied by an affidavit from the defendant indicating that the defendant wishes to apply for replacement counsel under the Criminal Justice Act, has retained new counsel, elects to appear pro se, or chooses to withdraw the appeal. Loc. R. 46.6. If defendant requests court-appointed counsel but has not already been granted indigence status, counsel must assist defendant with filing a financial affidavit in compliance with Fed. R. App. P. 24.
- B. Follow Loc. R. 46.6(c)(4) to insure that you have met all requirements for filing a brief under Anders v. California, 386 U.S. 738 (1967), including a motion to withdraw informing the Court that counsel has reviewed all necessary transcripts, has served the brief and motion on his or her client and has advised his or her client of the right to file a brief in thirty days.
- C. Motions to withdraw in criminal cases in which the judgment has been affirmed and in which defendant-appellant wishes to apply for a writ of certiorari must be filed well in advance of the deadline for filing such a petition and must conform to all the requirements of Loc. R. 46.5(c).

- 10. Call the clerk's office.** When you have questions that can't be answered by reviewing the rules or checking the court's docket on PACER, our staff at the clerk's office will be happy to assist you. Please call our main number at (617) 748-9057 and ask to speak with the case manager assigned to your appeal.